

OLC 72-0949

23 August 1972

MEMORANDUM FOR THE RECORD

SUBJECT: Conversation with Mr. David Carper, House of  
Representatives Legislative Counsel's Office

1. I called David Carper, in the House Legislative Counsel's office, to obtain his opinion on the various procedural aspects pertaining to House action on the Ervin bill as it was added as Title II of H. R. 12652. I also picked up from Carper some interesting information on his involvement with the Ervin-type legislation in the House.

2. Carper told me that he had been one of the three persons (two were members of the House Post Office and Civil Service Committee staff) who redrafted the Ervin bill for Representative Hanley's Subcommittee of the House Post Office and Civil Service Committee. He said it was the feeling of this trio that the bill, as it passed the Senate, set forth many employee rights but said nothing about the rights of supervisors. One of their goals was to correct this deficiency. He also commented that, as far as he knew, the Hanley bill was generally acceptable to the Civil Service Commission and contained only one wrinkle that was troublesome to the Administration. This concerns the section which contained certain specific exemptions (including the FBI, CIA and NSA) and provided for such other exemptions as the President may determine. The provision for further exemption ran into difficulty in the House Post Office and Civil Service Committee which inserted language requiring that Presidential exemptions be recommended to the Congress. This insertion in turn brought forth an objection from the Office of Management and Budget.

3. Carper said if the House accepts any legislation on employees' rights, it should insist on the Hanley version minus the Committee insertion. He is at a loss, however, as to how this might be accomplished since the Post Office and Civil Service Committee seems happy to have this problem transferred to the Judiciary Committee and the Judiciary Committee (not having held hearings on the subject) has no desire to deal with the substance of Government employee rights.

4. We talked at some length about the various approaches which could be taken on the question of the "germaneness" of Title II of H. R. 12652. Carper reviewed the provisions of House Rules 20 (clause 3), 28 (clause 3), and a resolution which has been introduced by Representative Colmer on this subject (H. Res. 1103). He pointed out that there are precedents for various interpretations of the Rules and the only way to determine how they would be interpreted in this instance is by an inquiry to the House Parliamentarian. This can be done only by a member or a committee staff member.

5. From this discussion it appears that if Chairman Celler decides to report H. R. 12652 out of conference with a notation that there is a "technical disagreement" on Title II, this would precipitate a floor discussion and a subsequent decision as to whether Title II was germane to H. R. 12652 as it passed the House. This would appear to satisfy the desire which Ervin expressed to Celler to have an "up or down vote on the bill on the House floor." But the general feeling among those I have talked with is that if a vote were taken at this time, the Ervin bill would probably pass the House.

6. Carper seemed to feel that at this juncture since neither the Post Office and Civil Service Committee nor the Judiciary Committee want to get involved in substantive discussions of the Ervin bill, Title II of H. R. 12652 could pass the House because of a lack of any substantive action against it.



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